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GOVERNMENT NOTICE NO. 35

FINANCIAL SERVICES ACT

(ACT NO. 26. OF 2010)

FINANCIAL SERVICES (RECORD KEEPING REQUIREMENTS FOR BANKS) DIRECTIVE 2012

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IN EXERCISE of the powers conferred by section 34 (2) (K) of the Financial Services Act, 2010, I, CHARLES S. R. CHUKA, Registrar of Financial Institutions, make the following Directive—

PART I—PRELIMINARY

1. This Directive may be cited as the Financial Services (Record Keeping Requirements for Banks) Directive, 2012.

2. In this Directive, unless the context otherwise requires—

“Act” means the Financial Services Act, 2010;

Interpretation

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2010

“Account” means any facility or arrangement by which a bank does any of the following—

- (a) accepts deposits;

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2010

(b) allows withdrawals of currency or transfers of currency into or out of the account;

(c) pays cheques or payment orders drawn on the banking institution by, or collects cheques or payment orders on behalf of a person other than the banking institution; or

(d) supplies a facility or an arrangement for a safe deposit box;

“Bank” has the meaning ascribed to that term in the Banking Act, 2010;

“Correspondent banking” means the provision of banking services by one bank (the “correspondent bank”) to another bank (the “respondent bank”);

“Customer” means any person or entity that maintains an account with the bank or those on whose behalf an account is maintained (i.e. beneficial owners); the beneficiaries of transactions conducted by professional intermediaries; and any person or entity connected with a financial transaction who can pose a significant reputational or other risk to the bank;

“Financial Institution” has the meaning ascribed to that term in the Act; and

“Registrar” means the Registrar of Financial Institutions appointed under the Act.

PART II—OBJECTIVE

Objective

3. The objective of this Directive is to ensure that banks keep, in a manner that can be easily reconstructed, records of—

(a) customer’s accounts; and

(b) transactions carried out by the customers.

PART III—RESPONSIBILITY OF THE BOARD

Board
responsibility

4.—(1) The board of directors of a bank shall adopt and ensure implementation by management, of a written policy on record keeping.

(2) The written policy shall take into account the requirements stipulated in this Directive.

PART IV—OBLIGATIONS OF A BANK

Record
keeping

5.—(1) A bank shall keep a record of—

(a) a customer’s account;

(b) transactions carried out by a customer; and

(c) correspondence relating to the transactions.

(2) The records shall be—

(a) sufficient to enable a transaction to be readily reconstructed at any time;

(b) stored electronically or otherwise; and

(c) maintained in a manner that will enable a bank to comply immediately with requests for information from the Registrar.

6. A bank shall ensure that appropriate backup and recovery procedures are in place for all records. Back-up

7. The records referred to in subparagraph 5 (1) shall be subject to inspection from time to time and without notice, by the Registrar. Inspection

8. A bank shall preserve the records and information required to be kept under this Directive for a period of at least seven years. Record
keeping
period

PART V—ENFORCEMENT

9.—(1) The Registrar shall impose the following monetary penalties for violations of this Directive— Monetary
penalties

(a) for banks, up to fifty million Kwacha (K50,000,000); and

(b) for natural persons who are members of the board of directors or senior management, up to ten million Kwacha (K10,000,000).

(2) With respect to banks, the Registrar shall—

(a) debit the penalty in subparagraph (1) (a) from the main account of the bank maintained at the Reserve Bank of Malawi; and

(b) notify the bank in writing prior to debiting the account.

(3) With respect to natural persons or where the bank does not maintain an account with the Reserve Bank of Malawi, the natural person or the bank shall pay the penalty through a bank certified cheque payable to the Reserve Bank of Malawi within ten working days after being notified by the Registrar.

10. In addition to the monetary penalties imposed in paragraph 9 (1), the Registrar may impose directions, administrative penalties and enforcement action as provided for under the Act and the Banking Act, 2010. Administra-
tive penalties
Act No. 10 of
2010

Made this 21st day of November, 2012.

C. S. R. CHUKA
Registrar of Financial Institutions